

**FILED**

**MAY 16 2012**

*[Signature]*

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

\* \* \* \* \*

QUADIRI AYODELE,

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

CR. 07-40055-1

\* MEMORANDUM OPINION  
\* AND ORDER

\* \* \* \* \*

Petitioner Quadiri Ayodele has filed a motion for leave to file a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 out of time. Doc. 1983.

Ayodele plead guilty to a violation of 21 U.S.C. §§ 841(a)(1) and 846. He was sentenced in August of 2008 to imprisonment of 240 months. Ayodele appealed to the Eighth Circuit Court of Appeals. On February 26, 2009, the Eighth Circuit granted Ayodele's motion to dismiss Ayodele's appeal. On April 6, 2010, after the Government filed a motion under FED. R. CRIM. P. 35, this Court amended Ayodele's judgment and reduced his sentence to 120 months. Ayodele then filed his first Section 2255 motion on August 5, 2010. This Court conducted the preliminary review required by Rule 4(b) of the Rules Governing Section 2255 Proceedings regarding Ayodele's first Section 2255 motion and determined that the first motion must be dismissed as untimely pursuant to 28 U.S.C. § 2255(f). Petitioner appealed this Court's dismissal of his first § 2255 motion to the Eighth Circuit Court of Appeals. The Eighth Circuit Court of Appeals denied a Certificate of Appealability and dismissed Petitioner's appeal.

Petitioner then filed a second Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 in March of 2011. Civ. 10-4160. That Section 2255 motion and motion to file motion out of time were dismissed for failure to comply with the requirements of 28 U.S.C. § 2255(h). On June 3, 2011, the Eighth Circuit Court of Appeals affirmed that dismissal.

Before a successive motion under 28 U.S.C. § 2255 is filed in the district court, the

petitioner must move in the appropriate court of appeals for an order authorizing the district court to consider the application. A panel of the court of appeals may authorize the filing of a second or successive motion under 28 U.S.C. § 2255 only if it certifies that the petition contains:

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

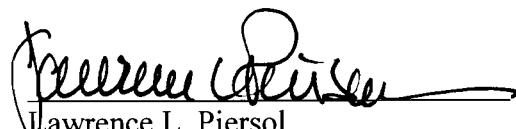
28 U.S.C. § 2255(h).

In his most recent petition, Ayodele rehashes the issues he has previously presented. Again, Petitioner Quadiri Ayodele has not presented the required certification from a panel of the Eighth Circuit Court of Appeals to proceed with a successive Section 2255 petition. Accordingly,

IT IS ORDERED that Quadiri Ayodele's motion to file Section 2255 motion out of time in the above action is denied for failure to comply with the requirements of 28 U.S.C. § 2255(h).

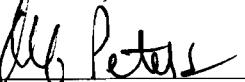
Dated this 16<sup>th</sup> day of May, 2012.

BY THE COURT:

  
Lawrence L. Piersol  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:   
M. Peters  
DEPUTY